

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
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SUBJECT: Fees: Small Claims Postponement Fee and Fees for Petitions to Seek
Return of Property (Code Civ. Proc., § 116.570; Health & Saf. Code, §
11488.5; Pen. Code, § 12028.5; and Welf. & Inst. Code, § 8102) (Action
Required)

Issue Statement

The Judicial Council previously approved proposals for sponsored legislation that were subsequently included in legislation in 2007. The Legislature then requested that these proposals be removed from Assembly Bill 1248 (Stats. 2007, ch. 738), the Judicial Council's court operations bill, and pursued in separate legislation. This request was not an evaluation of the merits of the proposals. Because there was not sufficient time in 2007 to find separate authors for the proposals in 2007, the proposals need to be pursued in 2008.

Recommendation

The Policy Coordination and Liaison Committee and staff recommend that the Judicial Council resubmit the following proposals to the Legislature:

1. Amend Code of Civil Procedure section 116.570 to authorize a \$10 postponement fee in small claims proceedings;
2. Amend Health and Safety Code section 11488.5 to clarify the \$320 filing fee for petitions to claim property that has been seized; and
3. Amend Penal Code section 12028.5 and Welfare and Institutions Code section 8102 to establish a \$320 filing fee for petitions to claim firearms that have been seized.

The text of the proposed legislation is attached at pages 5-7.

Rationale for Recommendation

Authorize a \$10 postponement fee in small claims proceedings

Courts encounter plaintiffs who file small claims actions but then do not pursue service on the defendant. Instead, the plaintiffs make repeated requests to postpone the hearing date, which results in the use of valuable court resources to reschedule small claims hearings. This proposal to amend Code of Civil Procedure section 116.570 would authorize the court to charge and collect a nonrefundable postponement fee from either party who makes more than one preservice request to postpone the hearing.

This fee would be assessed only after a party has already been granted one prior postponement. A self-represented party who filed a claim should know by the time the first free request for a postponement is made what procedures are available to serve his or her claim and whether any extra effort in effecting service may be required. By the second request for postponement, a minimum of 40 days to a maximum of 140 days will have passed from the date the claim was filed. This should be sufficient time for effecting service. Any additional requests for rescheduling the hearing would be subject to a \$10 fee under this proposal.

Clarify the \$320 filing fee for petitions to claim property that has been seized

Health and Safety Code sections 11470 and 11488 authorize the seizure and forfeiture of specified property when an arrest is made for certain offenses. Section 11488.5 sets forth procedures for a person whose property has been seized to file a petition to reclaim the property. No filing fee may be charged if the property is worth \$5,000 or less. (§ 11488.5(a)(3).) For property worth more than \$5,000, the filing fee should be \$320, although the statute is not clear, and this has caused some confusion. The filing fee should be set at this level even if the value of the property is within the range at issue in a limited civil case (that is, \$25,000 or less).

The filing fee for limited civil filings does not apply because a forfeiture proceeding under section 11488.5 does not meet the other requirements of Code of Civil Procedure section 85 defining limited civil matters: (1) that the relief sought is of a type that may be granted in a limited civil case, and (2) that the relief sought is described in a statute that either defines such cases as limited civil cases or gives the municipal court jurisdiction. A permanent injunction or a determination of title to real property may not be granted in a limited civil case. (Code Civ. Proc., § 580(b).) A forfeiture may be understood as a kind of permanent injunction, and proceedings under Health and Safety Code section 11488.5 may involve the forfeiture of real property. Additionally, before trial court unification, the superior court, and not the municipal court, had jurisdiction in proceedings under

section 11488.5. Thus, forfeiture proceedings under section 11488.5 are not limited civil cases even if the amount at issue is \$25,000 or less.

The proposed amendment to Health and Safety Code section 11488.5 will clarify that the fee to be charged is \$320 when the property at issue is worth more than \$5,000.

Establish a \$320 filing fee for petitions to claim firearms that have been seized

When a person is detained for examination of his or her mental condition, any firearm or other deadly weapon that the person possesses is required to be retained by law enforcement under Welfare and Institutions Code section 8102(a).¹ The person must be notified of the procedure for the return of the weapon. Upon the person's release, the law enforcement agency can either make the weapon available for return or initiate a petition in superior court for "a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others."

(§ 8102(c).) If the person does not respond within 30 days, the weapon is forfeited. If the person responds and requests a hearing, the court shall set a hearing no later than 30 days after receiving the request. (§ 8102(f).)

A similar procedure exists under Penal Code section 12028.5 in domestic violence cases. If the weapon was not illegally possessed and is not retained for use as evidence in related criminal charges, but the law enforcement agency has reasonable cause to believe that return of the weapon would likely result in endangering the victim or the person reporting the assault or threat, the agency must initiate a petition in superior court to determine if the weapon should be returned. (Pen. Code, § 12028.5(b), (f).) The person must be notified that failure to respond shall result in a default order forfeiting the weapon. (§ 12028.5(g).) If the person requests a hearing, the hearing must be set no later than 30 days after the court receives the request. (§ 12028.5(h).)

Because Government Code sections 6103 and 70633(c) exempt government agencies from filing fees, the law enforcement agency is not required to pay a fee for filing either the petition under the Welfare and Institutions Code or the petition under the Penal Code. No filing fee is specified for the respondent in either type of petition. Because neither proceeding falls within the definition of a limited civil case, the applicable fee for the respondent should be the \$320 fee under Government Code section 70612 for the "first paper in the action described in section 70611 on behalf of any defendant, intervenor, respondent, or adverse party." However, it is not obvious from the statutory language that this fee should be charged, and in the past some courts have not charged a fee to the

¹ This section also requires confiscation of deadly weapons when found in the possession of psychiatric inpatients who are a danger to themselves or to others, mentally disordered sex offenders, persons found not guilty by reason of insanity for specified violent crimes, persons found mentally incompetent to stand trial for criminal charges, persons placed under conservatorship due to disability by mental disorder or chronic alcoholism, and persons involuntarily committed to mental health institutions because they are a danger to themselves or others. (Welf. & Inst. Code §§ 8100, 8102, and 8103.)

respondent. Specifying what fee should be charged would be desirable for clarity and for statewide uniformity of practice.

Alternative Actions Considered

Because this proposal concerns resubmission of legislative proposals already approved by the Judicial Council, no alternative actions were considered.

Comments From Interested Parties

The proposal to amend Code of Civil Procedure section 116.570 was previously circulated for comment by the Civil and Small Claims Advisory Committee. The other two proposals were recommended by the Task Force on Civil Fees and to the Judicial Council. As a result, no further comment was solicited.

Implementation Requirements and Costs

Implementation of these fees will result in a minor revenue increase to the Trial Court Trust Fund.

Code of Civil Procedure section 116.570, Health and Safety Code section 11488.5, Penal Code section 12028.5, and Welfare and Institutions Code section 8102 would be amended to read:

Code Civ. Proc., § 116.570

(a) Any party may submit a written request to postpone a hearing date for good cause.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) The request shall state whether any previous requests to postpone the hearing date were made by the requesting party and whether the court granted those requests.

~~(2)~~ (3) The request shall be filed at least 10 days before the hearing date, unless the court determines that the requesting party has good cause to file the request at a later date.

~~(3)~~ (4) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

~~(4)~~ (5) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. This subparagraph does not limit the discretion of the court to grant additional postponements under subparagraph (A).

~~(5)~~ (6) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b)–(c) * * *

(d) A nonrefundable fee of ten dollars (\$10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

(e) A nonrefundable fee of ten dollars (\$10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date before service has been made pursuant to subdivision (b) of Section 116.340 or subdivision (b) of

1 Section 116.360 if the court granted a prior postponement to the party making the
2 request.

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4 **Health & Saf. Code, § 11488.5**

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6 (a) (1)–(2) * * *

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8 (3) The clerk of the court shall not charge or collect a fee for the filing of a claim in
9 any case in which the value of the respondent property as specified in the notice
10 is five thousand dollars (\$5,000) or less. If the value of the property as specified
11 in the notice is more than five thousand dollars (\$5,000), the clerk of the court
12 shall charge the filing fee specified in Section 70611 of the Government Code.

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14 (4) * * *

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16 (b)–(g) * * *

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18 **Pen. Code, § 12028.5**

19
20 (a)–(g) * * *

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22 (h) If the person requests a hearing, the court clerk shall set a hearing no later than 30
23 days from receipt of that request. If the request for a hearing is the first responsive
24 paper as described in Section 70612 of the Government Code, the clerk shall charge
25 the fee prescribed in that section. The court clerk shall notify the person, the law
26 enforcement agency involved, and the district attorney of the date, time, and place of
27 the hearing. Unless it is shown by a preponderance of the evidence that the return of
28 the firearm or other deadly weapon would result in endangering the victim or the
29 person reporting the assault or threat, the court shall order the return of the firearm or
30 other deadly weapon and shall award reasonable attorney's fees to the prevailing
31 party.

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33 (i)–(k) * * *

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35 **Welf. & Inst. Code, § 8102**

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37 (a)–(e) * * *

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39 (f) If the person responds and requests a hearing, the court clerk shall set a hearing, no
40 later than 30 days from receipt of the request. The court clerk shall notify the person
41 and the district attorney of the date, time, and place of the hearing. If the request for a
42 hearing is the first responsive paper as described in Section 70612 of the Government
43 Code, the clerk shall charge the fee prescribed in that section.

1
2 (g) * * *